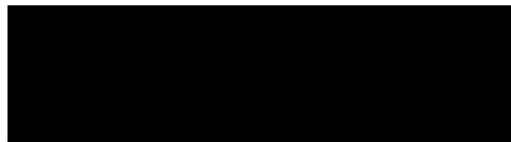


DATED 20<sup>th</sup> April 2023

SURREY COUNTY COUNCIL (1)

and



(2)

and

NORMAN MARSHALL LIMITED (3)

---

**PLANNING OBLIGATION UNDER  
SECTION 106 OF THE TOWN AND  
COUNTRY PLANNING ACT 1990  
RELATING TO LAND AT AUCLAYE  
BRICKWORKS, HORSHAM ROAD,  
CAPEL, SURREY, RH5 5JH**

---

Surrey County Council

Ref: SMS/112309

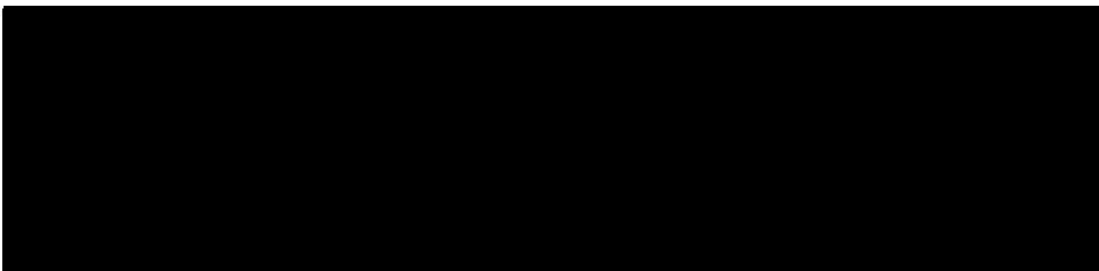
THIS AGREEMENT is made on 20<sup>th</sup> April

2023

**BETWEEN:**

(1) **SURREY COUNTY COUNCIL** of WOODHATCH PLACE, 11 COCKSHOT HILL, WOODHATCH, REIGATE, SURREY, RH2 8EF ("**the Council**"); and

(2)



(3) **NORMAN MARSHALL LIMITED** of Old Ewhurst Brickworks, Horsham Lane, Ewhurst, Cranleigh, Surrey, GU6 7SW (Co. Regn. No. 01359997) ("**the Developer**")

**BACKGROUND**

- (A) The Council is the local planning authority for the purposes of the TCPA 1990 for the area in which the Property is situated.
- (B) The Developer is the tenant of the Property.
- (C) The Developer has made the Planning Application and is proposing to carry out the Development.
- (D) On 26 October 2022 the Council resolved to grant the Planning Decision for the Development subject to the prior completion of this deed.

**AGREED TERMS**

**1 Interpretation**

The following definitions and rules of interpretation apply in this deed:

1.1 Definitions:

"**Commencement of Development**" means the carrying out in relation to the Development of any material operation as defined by section 56(4) of the TCPA 1990

but disregarding for the purposes of this deed and for no other purpose, the following operations:

- (a) demolition works;
- (b) site clearance;
- (c) ground investigations;
- (d) ecological investigations and mitigation;
- (e) site survey works;
- (f) temporary access construction works;
- (g) archaeological investigation; and
- (h) erection of any fences and hoardings around the Property;

**"Commence"** and **"Commences"** shall be construed accordingly;

**"Commencement Date"** means the date Development Commences;

**"Date of Approval"** means the date on which the LEMP or the GSW is approved by the Council:

**"Development"** means the development of the Property authorised by the Planning Permission;

**"GSW"** means a scheme of works for the 25-year management of geological conservation at the Property;

**"LEMP"** means a 25-year Landscape and Ecology Management Plan consisting of a 5-year aftercare and a 20-year management plan for ecological areas and 5-year aftercare for agricultural land at the Property pursuant to proposed condition 31 of the Planning Decision;

**"Plan"** means the plan attached at Schedule 2;

**"Planning Application"** means the application registered by the Council under reference number MO/2017/0953/SCC for the review of planning conditions as set out in planning permission reference MO/75/1165 dated 30 July 1976 pursuant to the

Environment Act 1995 so as to determine full modern working and restoration conditions;

**"Planning Decision"** means the planning decision to be granted by the Council in respect of the Planning Application with reference number MO/2017/0953/SCC and shall apply to any planning permission subsequently granted ("**Subsequent Permission**") under section 73 or 73A of the Act which permits non-compliance with any of the conditions attached to the Planning Permission and 'Permission' shall be construed to include the Development as stated in the Subsequent Permission PROVIDED THAT with regard to the Subsequent Permission no new material planning considerations have arisen since the granting of the Planning Decision that, in the view of the local planning authority, requires a deed of variation to be executed in respect of this Agreement or a new unilateral undertaking/ planning agreement under Section 106 of the 1990 Act to be executed;

**"Planning Permission"** means the planning permission reference MO/75/1165 dated 30 July 1976 pursuant to the Environment Act 1995;

**"Property"** means the land at Auclay Brickworks, Horsham Road, Capel, Surrey, RH5 5JH shown edged red on the Plan attached at Schedule 2 and registered at HM Land Registry with absolute title under title numbers SY521351 and SY889479;

**"TCPA 1990"** means Town and Country Planning Act 1990;

**"Working Day"** means any day which is not a Saturday, a Sunday, a bank holiday or a public holiday in England.

- 1.2 A person includes a natural person, corporate or unincorporated body (whether or not having a separate legal personality).
- 1.3 A reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.4 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.
- 1.5 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.

- 1.6 A reference to any party shall include that party's personal representatives, successors and permitted assigns and in the case of the Council the successors to its respective statutory functions.
- 1.7 Unless the context otherwise requires, a reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.
- 1.8 Unless the context otherwise requires, a reference to a statute or statutory provision shall include any subordinate legislation made from time to time under that statute or statutory provision.
- 1.9 A reference to this deed or to any other deed or document referred to in this deed is a reference to this deed or such other deed or document as varied or novated (in each case, other than in breach of the provisions of this deed) from time to time.
- 1.10 References to clauses and Schedules are to the clauses and Schedules of this deed.
- 1.11 An obligation on a party not to do something includes an obligation not to allow that thing to be done.
- 1.12 Any words following the terms including, include, in particular, for example or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.
- 1.13 Where an obligation falls to be performed by more than one person, the obligation can be enforced against every person so bound jointly and against each of them individually.

## **2 Statutory Provisions**

- 2.1 This deed constitutes a planning obligation for the purposes of section 106 of the TCPA 1990, section 111 of the Local Government Act 1972, section 1 of the Localism Act 2011 and any other enabling powers.
- 2.2 The covenants, restrictions and obligations contained in this deed are enforceable by the Council in accordance with section 106 of the TCPA 1990.
- 2.3 The covenants, restrictions and obligations contained in this deed are planning obligations for the purposes of section 106 of the TCPA 1990 and are entered into by the Owner and the Developer with the intention that they bind the interests held by

those persons in the Property and their respective successors and assigns SAVE THAT:

2.3.1 In order that no obligations contained in this deed shall be enforceable against any statutory undertaker or other utility service provider who acquires part of the Property or an interest therein solely for the purposes of the supply of a service no obligations contained in this deed shall relate to or be enforceable in respect of such part or parts of the Property as may be comprised within:

- (i) the freehold interest transferred;
- (ii) the leasehold interest granted; nor
- (iii) the legal interest created by the grant of an easement for a service in each case to such statutory undertaker or other utility service provider of serviced land.

### **3 Conditionality**

With the exception of clauses 2, 3, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16 and 17 (which take effect immediately), this deed is conditional on the grant and issue of the Planning Decision .

### **4 Covenants to the Council**

The Owner and Developer covenant with the Council to:

- 4.1 observe and perform the covenants, restrictions and obligations contained in Schedule 1.
- 4.2 give at least 10 Working Days written notice to the Council of the intended Commencement Date.

### **5 Release**

No person shall be liable for any breach of a covenant, restriction or obligation contained in this deed after parting with all of its interest in the Property, except in respect of any breach subsisting prior to parting with such interest.

**6 Determination of Deed**

The obligations in this deed (with the exception of clause 8) shall cease to have effect if before the Commencement of Development, the Planning Permission:

- 6.1 expires;
- 6.2 is varied or revoked other than at the request of the Owner or Developer; or
- 6.3 is quashed following a successful legal challenge.

**7 Local Land Charge**

This deed is a local land charge and shall be registered as such by the Council.

**8 Council's Costs**

The Developer shall pay to the Council on or before the date of this deed:

- 8.1 the Council's reasonable and proper legal costs together with all disbursements incurred in connection with the preparation, negotiation, completion and registration of this deed.

**9 Cancellation of Entries**

- 9.1 On the written request of the Owner or Developer at any time after each or all of the obligations have been performed or otherwise discharged (and subject to the payment of the Council's reasonable and proper costs) the Council will issue a written confirmation of such performance or discharge.
- 9.2 Following the performance and full satisfaction or discharge of all the terms of this agreement or if this deed is determined pursuant to clause 6 (and subject to the payment of the Council's reasonable and proper costs and charges) the Council will on the written request of the Owner or Developer seek to cancel all entries made in the local land charges register in respect of this deed.

**10 Disputes**

Any dispute, controversy or claim arising out of or relating to this deed, including any question regarding its breach, existence, validity or termination or the legal relationships established by this deed, shall be finally resolved by arbitration in accordance with the Arbitration Act 1996. It is agreed that:

- 10.1 the tribunal shall consist of one arbitrator appointed jointly by the parties;
- 10.2 in default of the parties' agreement as to the arbitrator, the arbitrator shall be appointed on either party's request by the President for the time being of the Royal Institution of Chartered Surveyors;
- 10.3 the costs of the arbitration shall be payable by the parties in the proportions determined by the arbitrator (or if the arbitrator makes no direction, then equally); and
- 10.4 the seat of the arbitration shall be London.

**11 No Fetter of Discretion**

Nothing (contained or implied) in this deed shall fetter or restrict the Council's statutory rights, powers, discretions and responsibilities.

**12 Waiver**

No failure or delay by the Council to exercise any right or remedy provided under this deed or by law shall constitute a waiver of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

**13 Future Permissions**

Nothing in this agreement shall prohibit or limit the right to develop any part of the Property in accordance with any planning permission (other than the Planning Permission or modification, variation or amendment thereof) granted after the date of the Planning Decision.

**14 Agreements and Declarations**

The parties agree that:

- 14.1 nothing in this deed constitutes a planning permission or an obligation to grant planning permission; and
- 14.2 nothing in this deed grants planning permission or any other approval, consent or permission required from the Council in the exercise of any other statutory function.



**15**    **Notices**

- 15.1 Any notice to be given under this deed must be in writing and must be:
- 15.1.1 delivered by hand; or
  - 15.1.2 sent by pre-paid first class post or other next working day delivery service.
- 15.2 Any notice to be given under this deed must be sent to the relevant party as follows:
- 15.2.1 to the Council at Development Management Team, Planning Group, Surrey County Council, Quadrant Court, Woking, GU22 7QQ and by email to [mwcd@surreycc.gov.uk](mailto:mwcd@surreycc.gov.uk) marked for the attention of Caroline Smith
  - 15.2.2 to the Owner at their respective addresses indicated in the parties clause of this agreement;
  - 15.2.3 to the Developer at Old Ewhurst Brickworks, Horsham Lane, Ewhurst, Cranleigh, Surrey, GU6 7SW marked for the attention of Norman Marshall;
- or as otherwise specified by the relevant party by notice in writing to each other party.
- 15.3 Any notice given in accordance with clause 15.1 and clause 15.2 will be deemed to have been received:
- 15.3.1 if delivered by hand, on signature of a delivery receipt or at the time the notice or document is left at the address provided that if delivery occurs before 9.00 am on a Working Day, the notice will be deemed to have been received at 9.00 am on that day, and if delivery occurs after 5.00 pm on a Working Day, or on a day which is not a Working Day, the notice will be deemed to have been received at 9.00 am on the next Working Day; or
  - 15.3.2 if sent by pre-paid first class post or other next working day delivery service, at 9.00 am on the Working Day after posting.
- 15.4 This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

**16 Third Party Rights**

A person who is not a party to this deed shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this deed.

**17 Governing Law**

This deed and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.

This document has been executed as a deed and is delivered and takes effect on the date stated at the beginning of it.

Executed as a deed by affixing the common seal of **SURREY COUNTY COUNCIL** in the presence of:



[Redacted signature area]

PRINCIPAL SOLICITOR

Authorised Signatory

Executed as a deed by **NORMAN MARSHALL LIMITED**

[Redacted signature area]

acting by

[Redacted signature area]

[Redacted signature area]

a director in the presence of

Signature of witness

Name of witness (in BLOCK CAPITALS)

[Redacted witness name]

Address (including postcode):

[Redacted address]

Witness' Occupation

[Redacted occupation]

11

Signed by [redacted]  
as a deed in the presence of:

Witness' signature:

Witness' name: (in BLOCK CAPITALS)

Witness' address (including post code)

Witness' occupation:

Signed by [redacted]  
as a deed in the presence of:

Witness' signature:

Witness' name: (in BLOCK CAPITALS)

Witness' address (including post code):

Witness' occupation:

Signed by [redacted]  
as a deed in the presence of:

Witness' signature:

Witness' name: (in BLOCK CAPITALS)

Witness' address (including post code)

Witness' occupation:

## Schedule 1

### Owner and Developer Covenants to the Council

The Owner and the Developer (together known as "the Parties") jointly and severally covenant as follows:

#### **1 Landscape and Ecology Management Plan (LEMP)**

- 1.1 No later than 6 (six) calendar months from the date of this Deed the Parties shall submit the proposed LEMP to the Council for written approval.
- 1.2 From the Date of Approval of the LEMP the Parties shall implement and thereafter continue to comply with the LEMP.
- 1.3 From the Date of Approval of the LEMP the Parties shall not operate the Development unless and until the LEMP is complied with.
- 1.4 The Parties shall include the following details in the LEMP:
  - 1.4.1 set out aims and objectives (and the management options to achieve these aims and objectives) of the LEMP for the completion of all phases of restoration and the subsequent aftercare and management periods;
  - 1.4.2 include a detailed plan showing management compartments for each habitat or landscape type;
  - 1.4.3 be in general accordance with Drawing Ref. 3440/DR/001 Sketch Landscape Masterplan Rev.B dated 28 October 2015 (attached at Schedule 3), Drawing Ref. AB/103 Rev G Excavation and Restoration Phasing Plan dated 21 December 2017 (attached at Schedule 4), and drawing AB/201 rev 6 Ecological Phasing Plan dated 7 November 2017 (attached at Schedule 5), or any other master plan or phasing plan approved by the Council;
  - 1.4.4 describe and evaluate features including any new planting and hibernacula;

- 1.4.5 identify any constraints which may influence aftercare and management;
- 1.4.6 set out any specific measures aimed at enhancing habitat quality or specific species including details of management for undesirable species or alien invasive species for all management compartments;
- 1.4.7 provide detailed prescriptions for management actions including mitigation, enhancement, and vegetation removal and replacement;
- 1.4.8 demonstrate how new planting is to develop from newly planted to established habitat;
- 1.4.9 set out how the landscape will be maintained including tree aftercare and replacement;
- 1.4.10 include detailed work schedules for progressive restoration phasing including a matrix providing timings of annual operations;
- 1.4.11 provide detail of and any specifications for any fencing or gates;
- 1.4.12 set out the resources to be used in and personnel responsible for implementation of the LEMP;
- 1.4.13 specify steps to be taken and the period during which they are to be taken for an annual meeting between the operator, the Developer, the County Planning Authority, and other interested parties;
- 1.4.14 Specify steps for the submission of a pre-release report, 6 months prior to the end of the aftercare period, to demonstrate that the agricultural land has been restored to the required standard.

## **2 Scheme of Works for the Management of Geological Conservation (GSW)**

- 2.1 Prior to commencement of extraction of clay from Phase 1 as shown on drawing AB/103 rev G "Excavation and Restoration Phasing Plan" dated 21 December 2017, the GSW shall be submitted to the Council for written approval.

- 2.2 From the Date of Approval of the GSW the Parties shall implement and thereafter continue to comply with the GSW.
- 2.3 From the Date of Approval of the GSW the Parties shall not operate the Development unless and until the GSW is complied with.
- 2.4 The Parties shall include the following details in the GSW:
- 2.4.1 an improvement plan for the geological SSSI present on site, defining the area and vertical extent of the exposure outcrop area to be conserved and justification thereof;
  - 2.4.2 a detailed description of the measures that will be put in place to reverse the current decline and improve the condition of the SSSI (which is currently listed by Natural England as “unfavourable declining”);
  - 2.4.3 a maintenance plan so that the ‘improved’ long-term condition of the SSSI is maintained for the duration of the approved period for the LEMP;
  - 2.4.4 a procedure for recording (before filling takes place) the geological information from the area of the existing SSSI that will be filled;
  - 2.4.5 an access statement in respect of the new clay excavations in the overall working extraction area subject of this planning permission, describing the controlled access arrangements that will be put in place to allow perpetual recording and research by geologists of the clay sections exposed so long as the geological outcrop remains designated a SSSI. For instance, geologists from Natural England, British Geological Survey, Geological Society, or other geoconservation stakeholders and geological researchers;
  - 2.4.6 a procedure for the segregation, recovery and long-term storage of nodules from the clay excavation extraction area to allow for their safe examination;
  - 2.4.7 measures for ensuring that no root or stump of any tree or shrub in the course of vegetation clearance associated with the SSSI is removed from the ground;

- 2.4.8 an access statement for the exposure outcrop area of the SSSI to be improved and conserved/maintained under (a) and (b) above, providing details as to how the site will be secured, how access for the general public will be maintained (gates and footpaths etc.), and the education facilities such as interpretation/information boards etc. that will be put in place;
- 2.4.9 an implementation timetable and a verification plan providing details of the monitoring and reporting that will be adopted to demonstrated compliance to the Council.

### 3. Community Liaison Group

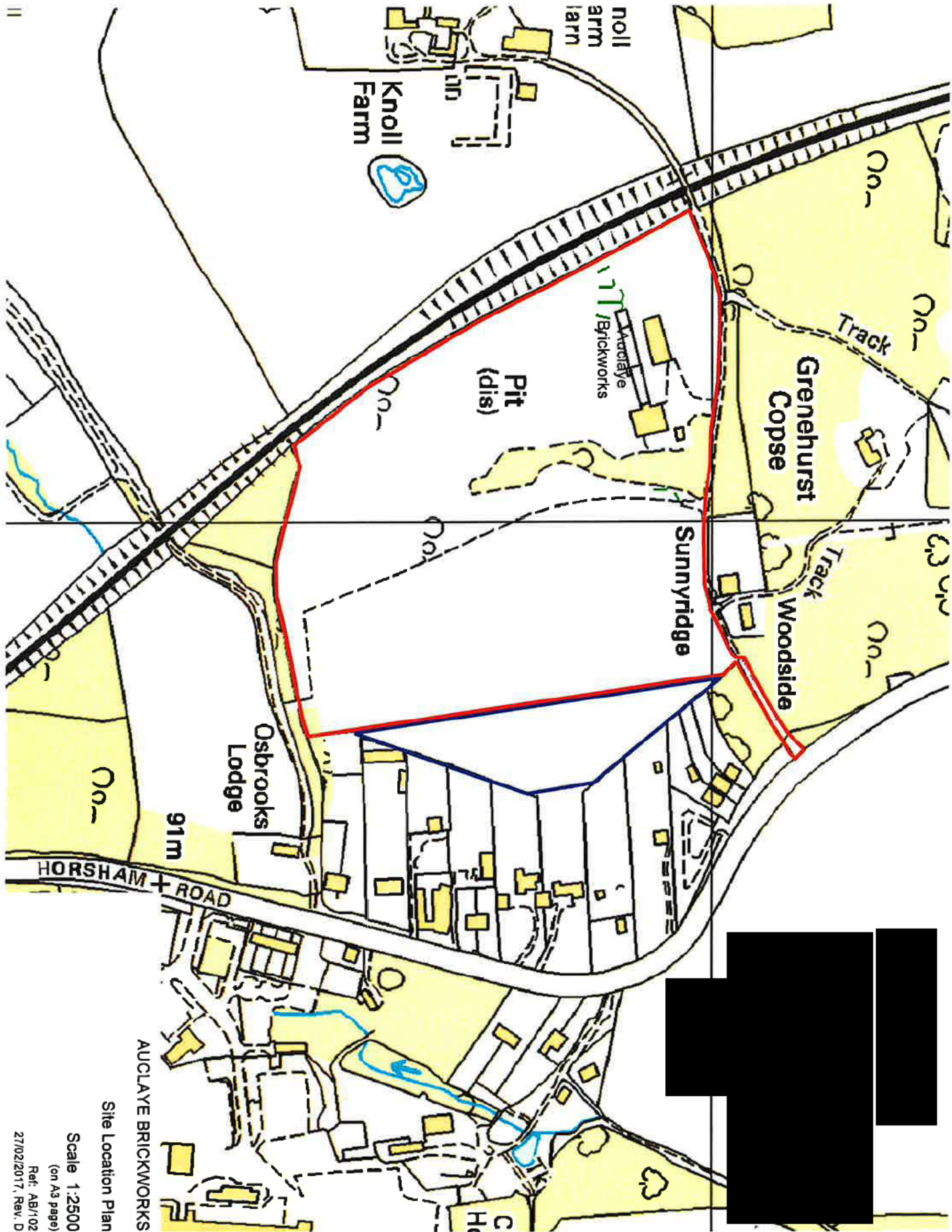
- 3.1 No later than 4 (four) calendar months from the Commencement Date, the Parties shall arrange and hold the first Local Liaison Group Meeting to be held in respect of the Planning Decision. Each Local Liaison Group Meeting shall be attended by at least one representative of the Parties.
- 3.2 The Parties shall invite the following to attend each Local Liaison Group Meeting:
- 3.2.1. A representative of the Council;
- 3.2.2. A minimum of 3 representatives of local residents (including community groups or similar organisations) (and to seek nominations for such 3 representatives from the Council); and
- 3.2.3. Any other relevant statutory stakeholders and relevant contractors.
- 3.3 In respect of clause 3.2.1 herein, that invitation shall be sent by email to both the local council member and to the Council at [mwcd@surreycc.gov.uk](mailto:mwcd@surreycc.gov.uk) unless and until the Council notifies the Parties in writing of alternative addresses.
- 3.4 Subject to clause 3.8 herein, the Parties shall arrange and hold a Local Liaison Group Meeting a minimum of three times in each calendar year unless otherwise agreed by the attendees of the Local Liaison Group Meeting with the Council.



- 3.5 The Parties shall give at least 4 weeks' notice of the date and venue and proposed agenda of each Local Liaison Group Meeting to all prospective attendees including the persons specified at clause 3.2 herein together with the minutes of the last such meeting.
- 3.6 A standing item on the agenda shall be to discuss the design of the junction and the level of traffic where the access road meets the A24 road.
- 3.7 The Council acknowledge and agree that the non-attendance at any Local Liaison Meeting of one or more of those parties referred to in clause 3.2 herein shall not invalidate that particular Local Liaison Meeting.
- 3.8 The Parties shall continue to hold the Local Liaison Group Meetings 5 years after the final phase has been signed.
- 3.9 Once the final phase has been signed into aftercare the Local Liaison Group Meetings may be held at a minimum of once a year.
- 3.10 The Parties shall submit minutes taken of each of the Local Liaison Group Meetings to the Council no later than twenty (20) working days following the date of each meeting.
- 3.11 The Parties shall publish a summary of the minutes of each Local Liaison Group Meeting on the website of the Parties relating to the Development and shall keep copies of the minutes with the Complaints Log relating to the Development.

**SCHEDULE 2**

Plan



Site Location Plan

Scale 1:2500

(on A3 page)

Ref: AB/102

27/02/2017, Rev. D

**SCHEDULE 3**

Drawing Ref. 3440/DR/001 Sketch Landscape Masterplan Rev.B dated 28 October 2015

11

# Sketch Landscape Masterplan (restored site)

Norman Marshall

Auclaye Brickworks, adl Knoll Farm, Capel, Surrey



**LEGEND**

- Existing meadowland
- Proposed meadowland
- Proposed grassland/scrub
- Proposed tree lined hedgerow
- Proposed pond
- Proposed areas of low ground
- Proposed areas of bare ground
- Proposed arable land

The information contained in this document is for the use of the client only. It is not to be used for any other purpose without the written consent of the author. The author accepts no liability for any loss or damage, however caused, arising from the use of this document.

3446 / DB/001  
 Norman Marshall  
 Auclaye Brickworks, adl Knoll Farm,  
 Capel, Surrey  
 Sketch Landscape Masterplan

31/01/2016  
 11/06/2016  
 01/07/2016  
 01/08/2016

PLANNING  
 L14  
 L15  
 L16

31/01/2016  
 31/01/2016  
 31/01/2016

**lloydbore**  
 31/01/2016  
 31/01/2016  
 31/01/2016

**SCHEDULE 4**

Drawing Ref. AB/103 Rev G Excavation and Restoration Phasing Plan dated 21  
December 2017



PHASE 1 - INITIAL EXTRACTION IN NORTHEAST

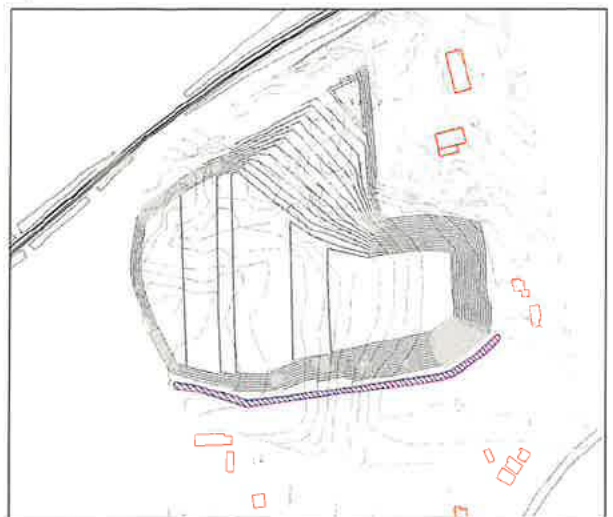
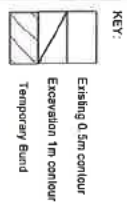


PHASE 2 - FURTHER EXTRACTION SOUTHWARDS



PHASE 3 - WIDENING QUARRY TO WEST

NOTES  
For sections see Dwg. AB/104



PHASE 4 - EXTRACTION PROGRESSING TO THE WEST TO COMPLETE EXCAVATION



RESTORATION SECTIONS A B C D E

RESTORATION SEQUENCE

EXCAVATION	RESTORATION
1	A
2	B
3	C
4	D
5	E

- \* Phase 2 will not start until habitat on SCC land is established
- \*\* Phase 3 excavation will not commence until habitat established on phase A

Amendments	Date	Changes	By	Rev
	21/10/2017	1.2 notes reworked	NHG	5
	23/09/2017	Temporary bund colour change	HR	4
	21/09/2017	Temporary bund colour moved	HR	3
	09/09/2016	Phasing plan reworked	HR	2
	30/07/16	Notes reworked	AC	1
	15/07/16	Crane section markers added	AC	0
	05/07/15	Phase 3 widened	AC	0
	05/07/15	Phase 2 widened	AC	0

Author: AUCLAVE BRICKWORKS  
 Title: EXCAVATION AND RESTORATION PHASING PLAN

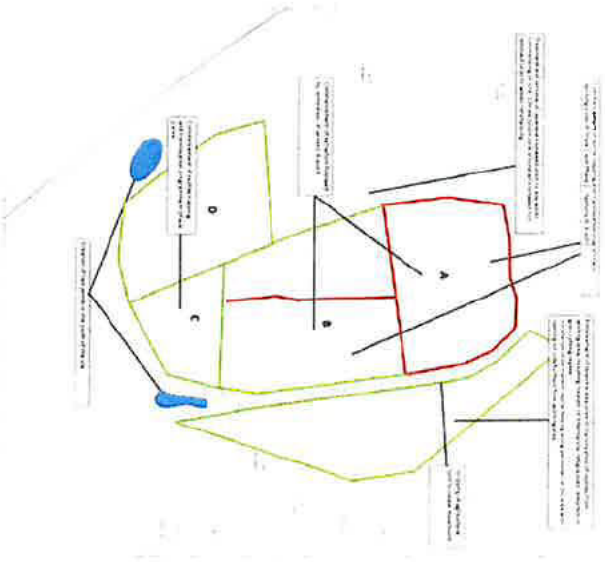
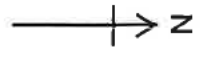
Client: NORMAN MARSHALL

Drawn: HR	CD: HR
Check: NHG	AW: NHG
Date: 11/05	Scale: 1:2000 @ A1
No. AB/103	Rev G

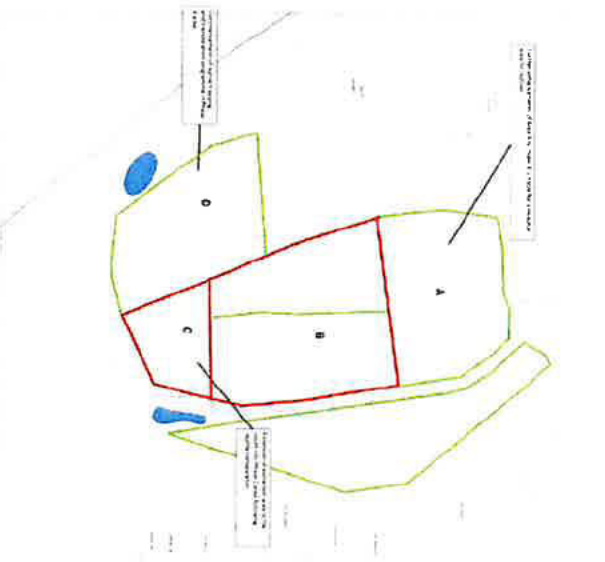
**SCHEDULE 5**

Drawing AB/201 rev 6 Ecological Phasing Plan dated 7 November 2017

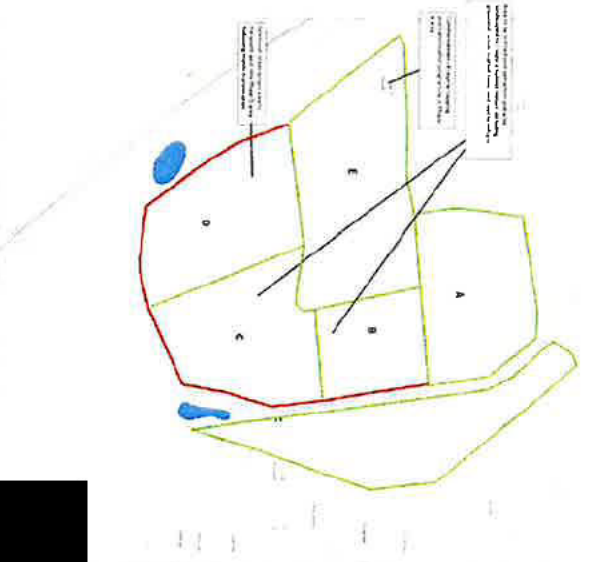




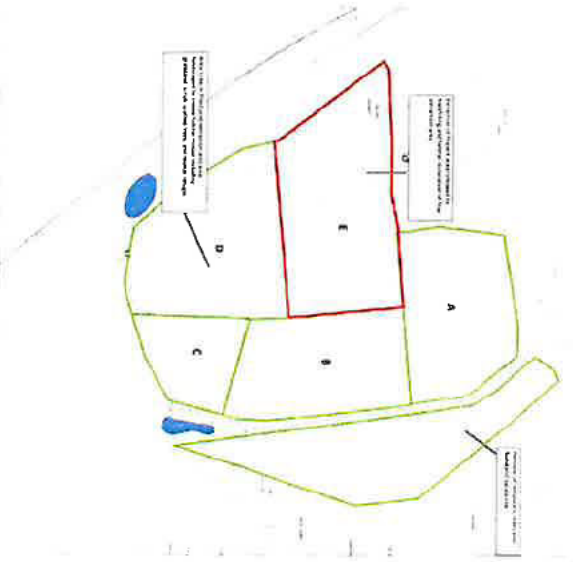
PHASE 1 - INITIAL EXTRACTION IN NORTHEAST



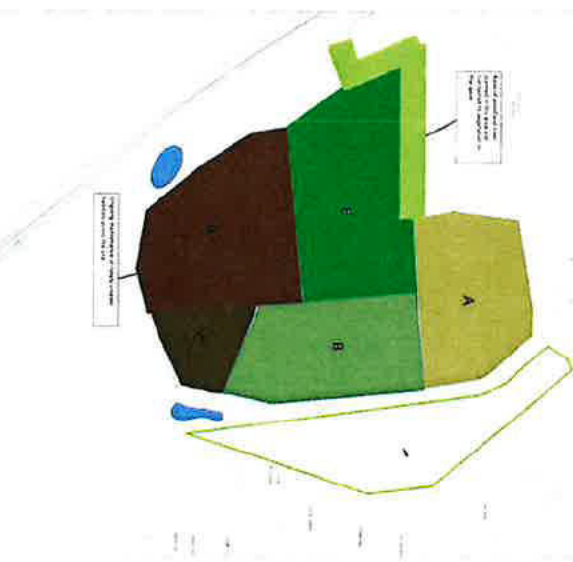
PHASE 2 - FURTHER EXTRACTION SOUTHWARDS



PHASE 3 - WIDENING QUARRY TO WEST



PHASE 4 - EXTRACTION PROGRESSING TO THE WEST TO COMPLETE EXTRACTION



RESTORATION SECTIONS A B C D E

- Newly created woodland
- Newly created pond
- Extraction areas

SCC Land

RESTORATION SEQUENCE

EXCAVATION RESTORATION	
1	A
2	B
3	C
4	D
5	E

- Phase 2 will not start until habitat on SCC land is established
- Phase 3 excavation will not commence until habitat established on phase A

11

**SURREY COUNTY COUNCIL**

No. IN SEALING  
REGISTER

33456

ORDERED TO  
BE SEALED

.....  
Planning & Regulatory  
Committee, Meeting 7 Dec 22  
minute 75/22